

visa. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present the visa for cancellation does not affect the validity of any action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation of a visa shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* The consular officer shall promptly submit notice of the revocation, including a full report of the facts in the case, to the Department for transmission to the INS. A report is not required if the visa has been physically canceled prior to the alien's departure for the United States.

(f) *Record of action.* Upon the revocation of an immigrant visa, the consular officer shall make appropriate notation for the post file of the action taken, including a statement of the reasons therefor, and if the revocation of the visa is effected at other than the issuing office, a report of the action taken shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular officer shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation of the visa be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefore shall be placed in the consular files and appropriate notification made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 42.71(b) providing for the refund of fees when the visa has not been used as a result of action by the U.S. Government, no fees shall be collected in connection with the application for or issuance of such a reinstated visa.

#### § 42.83 Termination of registration.

(a) *Termination following failure of applicant to apply for visa.* In accordance with INA 203(g), an alien's registration for an immigrant visa shall be terminated if, within one year after transmission of a notification of the availability of an immigrant visa, the applicant fails to apply for an immigrant visa.

(b) *Termination following visa refusal.* An alien's registration for an immigrant visa shall be terminated if, within one year following the refusal of the immigrant visa application under INA 221(g), the alien has failed to present to a consular officer evidence purporting to overcome the basis for refusal.

(c) *Notice of termination.* Upon the termination of registration under paragraph (a) or (b) of this section, the consular officer at the post where the alien is registered shall notify the alien of the termination. The consular officer shall also inform the alien of the right to have the registration reinstated if the alien, before the end of the second year after the missed appointment date if paragraph (a) applies, and before the end of the second year after the INA 221(g) refusal if paragraph (b) applies, establishes to the satisfaction of the consular officer that the failure to apply for an immigrant visa or to present evidence purporting to overcome the ineligibility under INA 221(g) was due to circumstances beyond the alien's control.

(d) *Reinstatement of registration.* If the consular officer is satisfied that an alien, as provided for in paragraph (c) of this section, has established that failure to apply as scheduled for an immigrant visa or to present evidence purporting to overcome ineligibility under INA 221(g) was due to circumstances beyond the alien's control, the consular officer shall reinstate the alien's registration for an immigrant visa. Any petition approved under INA 204(b) which had been automatically revoked as a result of the termination of registration shall be considered to be automatically reinstated if the registration is reinstated.

(e) *Interpretation of "circumstances beyond alien's control".* For the purpose of this section, the term "circumstances beyond the alien's control" includes,

but is not limited to, an illness or other physical disability preventing the alien from traveling, a refusal by the authorities of the country of an alien's residence to grant the alien permission to depart as an immigrant, and foreign military service.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991]

## PARTS 43-44 [RESERVED]

### PART 45—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 124 OF PUBLIC LAW 101-649

#### Sec.

- 45.1 General.
- 45.2 Priority date of applicants.
- 45.3 Control of numerical limitations.
- 45.4 Period of validity of immigrant visas.
- 45.5 Redetermination of admissibility if visa validity extended.
- 45.6 Issuance of immigrant visa upon redetermination of admissibility.

AUTHORITY: 8 U.S.C. 1104; 8 U.S.C. 1153 Note, unless otherwise noted.

SOURCE: 56 FR 32506, July 17, 1991, unless otherwise noted.

#### § 45.1 General.

Except as specifically provided in this part, the provisions of the INA, as amended, and of parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 124 of Public Law 101-649.

#### § 45.2 Priority date of applicants.

The priority date of an alien who is the beneficiary of a petition approved by the Service to accord status under section 124 of Public Law 101-649 shall be the filing date of the approved petition, as determined by the Immigration and Naturalization Service. The priority date of the spouse or child, accompanying or following to join such an alien shall be the priority date of the alien spouse or parent.

#### § 45.3 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 124 of Public Law 101-649 is established in the Department. In order to effect this control,

the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 124 of Public Law 101-649 to a number not to exceed 12,000 in any fiscal year and not to exceed in any month of a fiscal year 1,200 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of immigrant visa numbers.* Within the numerical limitations specified in paragraph (a) of this section and based on the chronological order of priority dates of applicants as established pursuant to § 45.2 of this part, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status to such aliens.

#### § 45.4 Period of validity of immigrant visas.

The period of validity of an immigrant visa issued to an alien pursuant to the provisions of this part may, at the request of the applicant, be extended until January 1, 2002, if the applicant so requests either at the time of issuance of the visa or within four months thereafter. If the applicant fails to make such a request at the time of visa issuance but subsequently, within four months thereafter, makes such a request, the consular officer shall issue a replacement visa to the alien in accordance with the provisions of § 42.74(b) of part 42 of this title.

#### § 45.5 Redetermination of admissibility if visa validity extended.

(a) An alien to whom an immigrant visa is issued pursuant to this part who elects to have the validity of the visa extended as provided in § 45.4 shall have his or her admissibility redetermined prior to actual travel to the United States as follows:

(1) If the alien is the beneficiary of a petition to accord status under section 124 of Public Law 101-649 which was supported by a specific offer of employment from the petitioning entity, or is the spouse or child of such an alien, a redetermination of admissibility is required only if the anticipated date of actual application for admission for permanent residence is more than four